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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: Texas Service Center Date: MAY 18 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Cindy M. Gomez for

Robert P. Wiemann, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The application was denied by the [redacted] and is now before the [redacted] on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish that he is a national of a foreign state designated by the Attorney General and eligible for the granting of Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2(a), provide that an applicant is eligible for temporary protected status only if such alien establishes that he or she:

> Is a national of a foreign state designated under section 244(b) of the Act;....

The applicant indicated on his application that he was a [redacted] In support of his application, he submitted a copy of his Salvadoran birth certificate.

In response to two Requests for Additional Evidence dated [redacted] and [redacted] the applicant submitted a copy of a Certificate of Change of Name to reflect a name change from [redacted] issued at [redacted] and a copy of a Texas Driver's license for [redacted] with a date of birth of [redacted] The applicant also submitted a Birth Certificate Summary Translation for Ever [redacted] with a date of [redacted]

The director concluded that the applicant had failed to establish that he was a national of a foreign state designated by the [redacted] and denied the application on [redacted] The director also determined that the applicant intentionally misrepresented some or all of the evidence in the record.

On appeal, the applicant, through counsel, asserted that he is eligible for [redacted] he is a citizen of [redacted] The applicant stated that he used his father's driver's license as proof of photo identification and that he has "dual citizenship or.nationality." The applicant submitted an untranslated copy of a birth certificate, [redacted] and a copy of visa stamp granting him [redacted] immigrant status in support of his appeal. Counsel also asserted that there is no prohibition that a dual national be excluded from TPS eligibility where one of the nationalities is not a TPS designated country.

The record indicates that the applicant changed his name in [redacted] The record also indicates that the applicant was admitted to Canada as an immigrant on a date [obliterated] prior to 1990.

[redacted] concluded that although an alien may hold the phenomenon of dual nationality, an alien may only claim one citizenship at a time for purposes of immigration matters within the United States. As explained i[redacted] not the prerogative or position of the United States to require a dual national alien nonimmigrant to elect to retain one or another of his nationalities. Equally as clear, the national sovereignty of the United States is acceptably and reasonably exercised through section [redacted] ding that a dual national alien nonimmigrant is, for the duration of his temporary stay in the United States, of the nationality which he claimed or established at the time that he entered the United States.

[redacted] further held that under appropriate circumstances in a given proceeding of law, the operative nationality of a dual national may be determined by his conduct without affording him the opportunity to elect which of his nationalities he will exercise. [redacted] reinforced this concept and states, "In interpreting a law which turns on nationality, the individual's conduct with regard to a particular nation may be examined. An individual's conduct determines his 'operative nationality.' The 'operative nationality' is determined by allowing the individual to elect which nationality to exercise. The nationality claimed or established by the nonimmigrant alien when he enters the United States must be regarded as his sole nationality for the duration of his stay in the United States." (Emphasis in original).

Additionally, the [redacted] concluded that the Service may, in the exercise of discretion, deny TPS in the case of an alien who, although a national of a foreign state designated for TPS, is also a national of another foreign state that has not been designated fo[redacted] explains that "TPS is not a provision designated to create a general right to remain in the United States. Rather, the statute provides a regularized means of granting haven to aliens who, because of extraordinary and temporary circumstances, cannot return to their home country in safety. See id. 244A(b)(1)(A), (B), and (C), 8 U.S.C. § 1254(b)(1)(a), (b), and (c)." Therefore, the findings of the director have not been overcome, and the petition must be denied for this reason.

Beyond the decision of the director, under section 244(c)(2)(B)(ii) of the Immigration and Nationality Act, an applicant is considered ineligible for TPS if he or she is firmly resettled in another country prior to arriving in the United States.

As defined in 8 C.F.R. § 208.15, an alien is considered to be firmly resettled if, prior to arrival in the United States, he or she entered into another country with, or while in that country received, an offer of permanent residence status, citizenship, or some other type of permanent resettlement unless he or she establishes:

> (a) That his or her entry into that country was a necessary consequence of his or her flight from persecution, that he or she remained in that country only as long as was necessary to arrange onward travel, or that he or she did not establish significant ties in that country; or
>
> (b) That the conditions of his or her residence in that country were so substantially and consciously restricted by the authority of the country of refuge that he or she was not in fact resettled. In making his or her determination, the asylum officer or immigration judge shall consider the conditions under which other residents of the country live; the type of housing, whether permanent or temporary, made available to the refugee; the types and extent of employment available to the refugee; and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges, such as travel documentation that includes a right of entry or reentry, education, public relief, or naturalization, ordinarily available to others resident in the country.

The record contains evidence that the applicant lived as a permanent [redacted] The fact that the applicant was admitted to Canada as [redacted] is deemed sufficient to support a deduction of resettlement in that country. Consequently, the director's decision to deny the application for temporary protected status on this ground will also be affirmed.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.